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ABSTRACT

Teachers and coaches once held a special place in the hearts and minds of the American public; however, times have changed. Students are quick to question authority and parents are more willing to retain the services of an attorney to solve their problems. Elementary and secondary school physical education teachers are especially vulnerable targets of legal liability lawsuits. The most frequently used yardstick to determine the liability of physical educators is negligence (a type of civil wrong), which is the failure to act as a reasonable and prudent person in a situation that causes someone harm. Because there are no concrete rules to define negligence, the courts utilize an objective formula to evaluate the conditions surrounding a sports injury to determine whether it was the result of the physical education teacher's negligence. The elements of the formula include: (1) Did the teacher owe the student a duty of care to protect him from unreasonable risks of harm? (2) Did the teacher breach his duty to protect the student by failing to provide a reasonable standard of care? (3) Were the teacher's actions the direct and proximate cause of the students injury? and (4) Did the student suffer an actual physical injury? (14 references) (KM)

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An overview of the basic principles of negligence: What the courts expect and demand of physical educators.

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Abstract

The reality of liability lawsuits has made an understanding and appreciation of the law of negligence essential for all physical education teachers. This paper provides an operational definition of negligence and clarifies its components. The criteria applied by the courts (duty; breach of duty; proximate cause; actual injury) to determine negligence in the realm of physical education are also identified and analyzed.

An overview of the basic principles of negligence: What the courts expect and demand of physical educators.

There was a time when teachers and coaches held a special place in the hearts and minds of the American public, and it was unthinkable to even consider suing a teacher. But, things have definitely changed! Students are quick to question authority and parents are more willing to retain the services of an attorney in order to seek solutions to their problems. Today, elementary and secondary school physical education teachers are finding they are especially vulnerable targets of legal liability lawsuits. Indeed, Adams (1984) pointed out, "the number of sports injury cases exceeds all other types of educational litigation cases combined" (p. 200).

Physical educators can protect themselves from the threat of liability lawsuits by familiarizing themselves with their legal status and taking appropriate action to maximize the health and safety of students. The purpose of this article is to succinctly identify and describe the basic principles of the law of negligence as it is applied to physical education.

The courts, now more than ever before, are taking an active role in setting standards by which to judge the competence of physical education teachers. In Green v. Orleans Parish School Board (1979), for example, the

court identified the need for physical education teachers to provide proper instruction and preparation for participation in vigorous activities. It is imperative physical educators have a basic understanding of these standards, as well as a working knowledge of the processes involved in the litigation of negligence, to ensure they are doing all that will be required and demanded of them by the courts in the 1990s.

Negligence, a type of tort or civil wrong, is the legal yardstick most frequently used to determine the liability of physical educators. A comprehensive and technically correct definition of negligence is available in Black's Law Dictionary (1979). Simply put, however, negligence is: the failure to act as a reasonable and prudent person in a situation which causes harm to someone.

On the surface, the definition of negligence appears rather straightforward and uncomplicated. However, when applied to the context of a physical education class it is laden with significant implications.

At the heart of the concept of negligence is the phrase "to act" which is interpreted as either an omission (failing to do something) or a commission (doing something) that results in an injury. A court will focus on the actions of the teacher prior to the occurrence of the student's injury. The cold hard facts

of what action the teacher did or did not take are what will be judged in a court of law. Heart felt apologies, belated concern for the welfare of an injured student or feelings of remorse, no matter how sincere, have no bearing on the determination of negligence in a lawsuit.

The second phrase, "a reasonable and prudent person", is the mythical standard used by the courts for determining the appropriateness of an action when a question of liability due to negligence arises. This standard requires that a person protect others from harm where the danger is apparent or should be apparent to someone occupying a similar position. The law requires and demands a person's conduct conform with any special knowledge, skill or intelligence he may possess which is superior to that of an ordinary person (Keeton, Dobbs, Keeton, and Owen: 1984). Professional physical educators have special training and attributes. They are expected by the courts to be competent in the application of the concepts and principles of anatomy, kinesiology, exercise physiology, sport psychology, sport pedagogy, principles of conditioning, care and treatment of athletic injuries, and first aid and safety. Therefore, physical educators are held to a higher and more stringent standard of conduct than that of a lay person who has not had the benefit of such special training. In a lawsuit alleging negligence, an important issue will be whether a physical educator

matched the standard of care commonly found among other members of the profession. Thus, when applied to physical education, the basic definition of negligence is transformed to: "The failure to act as a reasonable and prudent professional physical educator in a situation which causes harm to someone". A transformation which bodes ill for those who take their duties lightly or who pay little attention to the research, trends and issues in the profession. In a Minnesota case, Larson v. Independent School District No. 314 (1979), the court concluded an inexperienced physical education teacher had not measured up to these higher standards. The teacher had failed to follow proper sequence and progression when he taught a class how to perform a front hand spring during a tumbling unit. This error resulted in an eighth grade student being rendered a quadriplegic. The teacher was held to be negligent and liable for damages.

The word "situation" is another important component of the definition of negligence. This word indicates the law of negligence can be applied to any setting, including that of physical education. There are no hard and fast rules that identify what constitutes negligence when conducting a class in tumbling, soccer, wrestling, volleyball, or any of the hundreds of other activities that comprise the curriculum of physical education. Instead, individual situations are evaluated to

determine whether or not the actions taken by a teacher were reasonable and prudent. As Lenich (1987) stressed, "What constitutes negligence varies with the circumstances and no two cases are exactly alike" (p. 36). Consequently, the courts utilize an objective formula to evaluate the conditions surrounding the cause of an injury to determine if it was caused by negligence. This formula is composed of four elements and all four must be answered affirmatively in order to sustain a cause of action for negligence. The elements of the negligence formula are:

1. Did the teacher owe the student a duty of care to protect him from unreasonable risks of harm?
2. Did the teacher breach his duty to protect the student by failing to provide a reasonable standard of care?
3. Were the teacher's actions the direct and proximate cause of the student's injury?
4. Did the student suffer an actual physical injury?

Duty, the first element of the negligence formula, relates to the legal responsibility a teacher owes to students assigned to his class. The greater the inherent danger of an activity, the greater the duty of care is owed for the protection of the health and safety of students. As Vacca (1974) noted, "Teachers at all levels owe a legal, ethical and moral obligation to

their colleagues, to parents, students, and to themselves to maintain a safe, hazard free environment in which learning can take place. No one in school or on the playground should be subjected to unnecessary risks, because someone else was negligent" (p. 456).

Specific duties professional physical educators are expected to perform in order to affirmatively meet their fundamental duty to protect students from unnecessary injuries have been identified in case law. These responsibilities include providing: proper instruction; adequate supervision; sound planning; warning of inherent risks and dangers; safe environments and equipment; fair matching of opponents; proper first aid; appropriate evaluation of incapacitating conditions. A thorough analysis of these professional obligations can be found in Bjorklun, 1989; Lenich, 1987; Nygaard and Boone, 1985.

The second element, breach of duty, specifically addresses the issue of whether or not a physical education teacher acted reasonably and responsibly in fulfilling his obligation to protect students from unreasonable risks. This is a critical element in the determination as to whether negligence exists or not. To support a claim of negligence it must be established the teacher failed to conform to the standard of conduct expected of a professional physical educator. Keeton, et al. (1984) clarified this concept by stating:

> The standard of conduct imposed by the law is an external one, based upon what society demands generally of its members, rather than upon the actor's personal morality or individual sense of right and wrong. A failure to conform to this standard is negligence, therefore, even if it is due to clumsiness, stupidity, forgetfulness, and excitable temperament, or even sheer ignorance. (p. 169)

In Stehn v. Bernarr MacFadden Foundations, Inc. (1970), a teacher never instructed a class participating in a wrestling unit how to properly counter a pinning combination that had been previously taught to the class. Stehn, a 15 year old boy, found himself in this particular hold and was unable to prevent himself from being turned to his back in a somersault type motion. This movement severed his spinal cord and he was rendered a quadriplegic. The court specifically noted that the teacher's failure to teach proper resistance to this pinning technique constituted a breach of his fundamental duty to protect students from unnecessary injuries. The court ultimately ruled that the physical education teacher's conduct constituted negligence.

The third element in the formula, direct and proximate cause, is focused on determining whether the physical education teacher's conduct was a significant factor in bringing about a student's injuries. Two

questions must be answered in order to establish this element in the negligence formula:

1. Would the injury to the student have occurred "but for" the actions of the teacher?

This question establishes whether the injury suffered by the student would have occurred had it not been for the actions of the teacher. In Welch v. Dunsmuir Joint Union High School District (1958), a high school quarterback was unable to get up from the ground after being tackled. His coach instructed a group of players to carry him to the side lines so practice could continue. The players grabbed Welch by his arms and legs, without supporting his head or neck, then lifted and carried him off the field. The court noted there was ample evidence to indicate Welch was not paralyzed before he was carried to the side lines and the paralysis would not have occurred "but for" the instructions of the coach. The link between the coach's actions and the resulting catastrophic injury were clearly evident. There would have been no such injury had the coach not instructed the player be removed from the field of play.

If the teacher's actions are determined to be the actual cause of the student's injury, the second question becomes a matter of paramount importance.

2. Was the injury to the student a foreseeable event that could have been prevented?

If a student's injury was a reasonable consequence of a teacher's actions and should have been anticipated at the time of the injury, then the question of foreseeability is affirmatively answered. The teacher will then be held legally liable for those actions. If, on the other hand, the injury is beyond what a professional physical educator could have reasonably foreseen or anticipated there will be no liability imposed upon the teacher. As Berry & Wong (1986) concluded, "The law excuses all persons from liability for accidents that are either unavoidable or unforeseeable" (p. 284).

The final element in the negligence formula addresses the existence of an injury. Alexander and Alexander (1985) pointed out, "A plaintiff, of course, cannot recover unless actual injury is suffered and the plaintiff is able to show actual loss or damages resulting from the defendants's act" (p. 461). Therefore, a student cannot successfully state a claim of negligence against a physical educator unless he actually suffered physical harm as a result of the teacher's actions. If it is proved that the student's injury was the result of the teacher's negligence a variety of monetary damage awards, such as compensation for medical expenses, physical pain, mental distress, future pain and suffering, as well as, loss of earning power may be recovered. These damages can add up to

substantial sums. In Larson v. Independent School District No. 314, (1979) the jury awarded the student slightly over $1.1 million in damages.

Physical education teachers can ill afford to ignore the fact that they are at risk of being the target of negligence lawsuits. Knowledge, understanding, and appreciation of how negligence is determined should help sensitize physical educators as to what their legal posture is when carrying out their duties, and help them avoid becoming embroiled in a negligence lawsuit. More importantly, this new awareness will ultimately translate into a healthier and safer environment for children to enjoy the development of their mind and bodies while at play.

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